

REMARKS

Summary of the Non-Final Office Action

Claims 1-5, 7-17, and 20-27 were pending in the application.

The Examiner rejected claims 1-5, 7-8, and 27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter because the claimed subject matter is not within the technological arts. The Examiner rejected claim 10 under 35 U.S.C. § 102(e) as being anticipated by Chacker U.S. Patent No. 6,578,008 (hereinafter “Chacker”). The Examiner further rejected claims 1-5, 7-9, 11-17, and 20-27 under 35 U.S.C. § 103(a) as being unpatentable over Chacker in view of several articles discussing a Web site called Riffage.com (hereinafter “the Riffage.com articles”).

Summary of Applicant's Reply

Applicant has amended claims 1, 9, 10, 13, 17, 22, 24, 26, and 27 to correct several typographical errors and to more particularly point out and distinctly claim the invention, and has canceled claims 11 and 12. No new matter has been added by these amendments of the claims. The Examiner's rejections are respectfully traversed.

The Rejection Under 35 U.S.C. § 101

The Examiner rejected claims 1-5, 7-8, and 27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant has amended independent claims 1 and 27 to recite the receiving of user input “at a CPU.” Applicant respectfully submits that no new matter has been introduced by this amendment. Support for the present amendments regarding the use of a CPU can be found in FIG. 2 and on pages 5-6 of the specification.

Accordingly, applicant respectfully requests that the rejection to claims 1-5, 7-8, and 27 under 35 U.S.C. § 101 be withdrawn.

The Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected claim 10 under 35 U.S.C. § 102(e) as being anticipated by Chacker. Applicant has amended claim 10 in order to more particularly define the invention. This amendment is fully supported by the specification and drawings, for example at page 7, line 26 through page 8, line 9, and FIG. 4 in the originally filed specification, and thus no new matter has been added. The Examiner's rejection is respectfully traversed.

Claim 10 is generally directed toward establishing a fund of user contributions and providing that fund to an artist in response a certain level of contributions being made. More particularly, claim 10 requires:

establishing a fund of...contributions for an artist and providing at least a substantial portion of the fund to the artist in response to a certain level of contributions being made

Chacker, on the other hand, discusses an interactive investment stock-market simulation game whereby users can trade various artists' stock with imaginary money in order to "vote" on the artist. See, e.g., Chacker, column 7, lines 19-22. Participation in the game is encouraged by giving prizes out to the top traders such as money, T-shirts, CD's and even a new car. See, e.g., Chacker, column 8, lines 62-66. Based on the trading, the artists with the highest stock prices may be chosen by scouting agents to be eligible to receive a recording contract. See, e.g., Chacker, column 9, lines 10-18.

In rejecting claim 10, the Examiner repeatedly pointed to column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and

column 9, lines 1-20, as allegedly showing establishing a fund for an artist, allowing a user to sell a contribution in an artist, allowing a user to trade a contribution in an artist to another user, and allowing a user to sell shares in an artist and leave money in his/her portfolio. Thus, the Examiner seems to be asserting that the stock market game of Chacker is the same thing as establishing a fund of user contributions.

Contrary to the Examiner's assertions, however, applicant respectfully submits that Chacker does not show or suggest the claimed invention for at least the reasons that Chacker fails to show or suggest: 1) establishing a fund of user contributions for an artist; and 2) providing a fund of user contributions to an artist in response to a certain level of contributions being made.

**Chacker Fails to Show or Suggest
Establishing a Fund of User Contributions For an Artist**

Unlike the claimed invention, the stock market of Chacker does not show or suggest providing a fund of user contributions to an artist. Rather, it merely shows a mechanism that is used to gauge the interest of participants in certain artists. Because of this, there is absolutely no disclosure in Chacker that money invested in its stocks would ever be provided to, or for the benefit of, artists. Instead, as is made clear in Chacker, the money "invested" in its stock market is purely used to gauge public interest in artists as if the users were voting on the artists. See, e.g., Chacker, column 7, lines 19-22. Unlike a traditional stock market, the money "invested" in Chacker's stock market is not invested in exchange for an ownership interest in the artist – it is invested to gauge interest in the artist. Hence, there is no need in Chacker for money in its stock market to ever be put in a fund established for artists. Rather, if such a stock market were actually implemented, it would be a mechanism for gambling on the popularity of the artists (where no benefit goes to the artist), instead of being a mechanism for generating capital for

artists (where a benefit would go to the artist). This is a fundamental trait of the stock market of Chacker.

Moreover, as the Examiner acknowledged in arguing that element (b) of claim 10 is anticipated, in a stock market, trades of stock are made from one user to another. That is, the money used by a trader to buy stock is not given to the artist, it is given to another trader selling his/her stock. Similarly, when selling stock, money is not taken away from an artist, it is taken from another user buying the stock. Thus, even assuming arguendo that stock purchases in Chacker were “contributions” as recited in applicant’s claims, nowhere in Chacker is there any indication that such contributions are put in to, or taken from, a fund established for the artists as required by the claims. Rather, any “money” invested in artists’ stock is used to pay traders cashing out of that stock.

Thus, applicant respectfully submits that Chacker does not show or suggest establishing a fund of contributions for an artist as required by claim 10.

Chacker Also Fails to Show or Suggest Providing a Fund of User Contributions To an Artist in Response to a Certain Level of Contributions Being Made

Moreover, even assuming arguendo that the money from “investments” in the stock market of Chacker were somehow provided to, or for the benefit of, artists (which applicant maintains is not shown or suggested), absolutely nothing in Chacker shows or suggests that such investments would only be provided to the artists in response to a certain level of contributions being made as required by claim 10. Rather, one of ordinary skill in the art would expect that the money from those investments would be provided to the artists irrespective of the level of those investments because the artist would want the money. In any event, because Chacker is absolutely silent on this point, it clearly does not show or suggest this limitation of the claimed invention.

Accordingly, for at least the reasons set forth above, applicant respectfully request that the rejection of the claim 10 under 35 U.S.C. § 102(e) be withdrawn.

The Rejection Under 35 U.S.C. § 103

The Examiner rejected claims 1-5, 7-9, 11-17, and 20-27 under 35 U.S.C. § 103 as being unpatentable over Chacker in view of the Riffage.com articles. Applicant has amended claims 1, 9, 10, 13, 17, 22, 24, 26, and 27 to more particularly define the invention, and has cancelled claim 11 and 12. This amendment is fully supported by the specification and drawings, for example at page 7, line 26 through page 8, line 9, and FIG. 4 in the originally filed specification, and thus no new matter has been added. The Examiner's rejection is respectfully traversed.

Claims 1-5, 7-10, 13-17, and 20-27 are generally directed toward establishing a fund of user contributions and providing that fund to an artist in response to a certain level of contributions being made. More particularly, independent claims 1, 9, 10, 17, 22, 24, 26, and 27 require:

“providing said fund, minus a commission, for the benefit of each artist in response to the fund attaining the predefined money level of user contributions” (claims 1, 9, and 17);

“providing at least a substantial portion of the fund to the artist in response to a certain level of contributions being made” (claim 10);

“providing the financial contributions, minus a commission paid to the manager of the system, for the benefit of the artist in response to the artists receiving the predefined amount of direct financial contributions” (claim 22);

“provide said fund, minus a commission, for the benefit of each artist in response to the fund attaining the predefined money level of user contributions” (claim 24);

“making financial contributions from users, wherein the financial contributions are money, available to artists in response to the financial contributions reaching a certain level of contributions” (claim 26); and

“providing the financial contributions, minus a commission, for the benefit of the artist in response to the artist receiving the predefined amount of financial contributions, wherein the financial contributions are money” (claim 27).

As stated above, Chacker discusses an interactive investment stock-market simulation game whereby users can trade various artists’ stock with imaginary money in order to “vote” on the artist. The Riffage.com articles, on the other hand, describe the Riffage.com Web site which sold digital downloads and merchandise for unsigned artists. See, e.g., the Riggage.com articles, article A, page 1, section 1. With any sales, Riffage.com took a commission on the sale and passed the rest of the money onto the artist. See, e.g., the Riggage.com articles, article C, page 1, section 4, page 2, section 1. The Riffage.com articles also describe using a count of the number of times users accessed or downloaded a band’s music to determine the popularity of the band and offer bands contracts based upon this metric. See, e.g., the Riggage.com articles, article B, page 1, section 4.

In rejecting claims 1-5, 7-9, 11, 13-17, and 20-27 as being obvious from Chacker in view of the Riffage.com articles, the Examiner acknowledged that “Chacker does not expressly disclose that the funds come directly from the user’s contributions or that the fund, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions” (Office Action, page 7, lines 8-10). However, the Examiner asserted that the Riffage.com articles disclose “making available to each artist attaining a level of user contribution funds, minus a commission, from the user’s contribution to the artist” (Office Action, page 7, lines 11-13) and that it would have been obvious to one of ordinary skill in the art “to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an

artist by receiving money from the fans of the artist” (Office Action, page 7, line 22 through page 8, line 3).

Contrary to the Examiner’s assertions, however, applicant respectfully submits that Chacker and the Riffage.com articles, whether taken alone or in combination, do not show or suggest the claimed invention for at least the reasons that they both fail to show or suggest providing a fund to an artist in response to the fund attaining a certain level of user contributions.

As set forth above in connection with the discussion of why claim 10 is not shown by Chacker under 35 U.S.C. § 102(e), even assuming *arguendo* that the money from “investments” in the stock market of Chacker were somehow provided to, or for the benefit of, artists (which applicant maintains is not shown or suggested), absolutely nothing in Chacker shows or suggests that such investments would be provided to the artists in response to a certain level of contributions being made. Rather, a person of ordinary skill in the art would expect that the money from those investments would be provided to the artists irrespective of size and immediately, or upon some periodic basis, for example, once per day or month.

Similarly, assuming *arguendo* that the income from the sales of music and merchandise in the Riffage.com articles were “contributions” as required by the claims, nothing in the Riffage.com articles shows or suggests providing that income in response to that income reaching a certain level. Rather, as with Chacker, a person of ordinary skill in the art would expect that income to be provided immediately (such as by direct deposit to a bank account) or periodically (for example, once per day or month).

Moreover, even assuming *arguendo* that providing a contract to an artist as described in Chacker or the Riffage.com articles were somehow construed as being “contributions” from users, as described in those references, a contract is only provided in response to a decision by an

A&R representative (Chacker, column 9, lines 14-18) or "1500 Records' talent scouts" (the Riffage.com articles, article B, section 4).

Thus, because Chacker and the Riffage.com articles both alone and in combination do not show or suggest providing a fund to an artist in response to the fund attaining a certain level of user contributions, independent claims 1, 9, 10, 17, 22, 24, 26, and 27, and claims 2-5, 7, 8, 13-16, 20-21, 23, and 25 which depend therefrom, are not shown or suggested by these references.

Accordingly, for at least the reasons set forth above, the applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

For at least the reasons set forth above, applicant respectfully submits that this application is in condition for allowance. Reconsideration and prompt allowance of the application are respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Matthew T. Byrne', is written over a horizontal line.

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